

1901

THE TOWN OF TRURO *v.* ARCHIBALD.

\*Feb. 22, 25.

\*May 13.

*Municipal drains—Continuing trespass—Limitation of actions ex delictu—*  
58 V. c. 4, s. 295 (N. S.)—*Verdict.*

APPEAL from a judgment of the Supreme Court of Nova Scotia, *en banc* (1), reversing the judgment entered for the defendant on findings of the jury at the trial and maintaining the plaintiff's action with costs.

The plaintiff's action was for trespass by the municipal corporation constructing and maintaining a drain through his land. The jury found that the drain had been constructed in 1886 "by virtue of the Streets Commissioner's power of office." The plaintiff, although aware of the existence of the drain at the time, made no objection till 1896, when the land caved in. The court below held that the jury had found that the defendant had constructed the drain by its agent, and that the trespass, being a continuing one, was not barred by the limitation provided in the "Towns' Incorporation Act of 1895" for actions *ex delictu* against towns.

After hearing counsel for the parties, the court reserved judgment, and on a subsequent day, dismissed the appeal with costs.

*Appeal dismissed with costs.*

*Borden K.C.* and *Lovett* for the appellant.

*Mellish* for the respondent.

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\*PRESENT :—Taschereau, Gwynne, Sedgewick and Girouard JJ.

(Mr. Justice King was present at the argument but died before judgment was delivered.)